

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 157

BY SENATOR MAYNARD, *original sponsor*

[Passed March 12, 2016; in effect from passage]

1 An ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as
2 amended, relating generally to promulgation of administrative rules by Department of
3 Revenue; relating generally to repealing certain legislative, procedural or interpretive rules
4 promulgated by certain agencies and boards under the Department of Revenue which are
5 no longer authorized or are obsolete; authorizing certain of the agencies to promulgate
6 certain legislative rules in the form that the rules were filed in the State Register;
7 authorizing certain of the agencies to promulgate certain legislative rules with various
8 modifications presented to and recommended by the Legislative Rule-Making Review
9 Committee; authorizing certain of the agencies to promulgate certain legislative rules with
10 various amendments presented to and recommended by the Legislative Rule-Making
11 Review Committee; authorizing certain of the agencies to promulgate certain legislative
12 rules with various amendments recommended by the Legislature; directing various
13 agencies to amend and promulgate certain legislative rules; authorizing Alcohol Beverage
14 Control Commission to promulgate legislative rule relating to nonintoxicating beer
15 licensing and operations procedures; authorizing Alcohol Beverage Control Commission
16 to promulgate legislative rule relating to private club licensing; authorizing Alcohol
17 Beverage Control Commission to promulgate legislative rule relating to distilleries and
18 mini-distilleries; authorizing the Racing Commission to promulgate legislative rule relating
19 to thoroughbred racing; authorizing Racing Commission to promulgate legislative rule
20 relating to pari-mutuel wagering; authorizing Department of Revenue to promulgate
21 legislative rule relating to payment of taxes by electronic funds transfer; authorizing
22 Department of Revenue to promulgate legislative rule relating to an exchange of
23 information agreement between Commissioner of the Tax Division of the Department of
24 Revenue and Secretary of the Department of Commerce, Secretary of State, Secretary of
25 the Department of Environmental Protection, Director of the Division of Forestry of the
26 Department of Commerce and Commissioners of the Public Service Commission;

repealing certain legislative and procedural rule promulgated by certain agencies and boards under the Department of Revenue; repealing the Tax Division legislative rule relating to listing of interests in natural resources for purposes of first statewide appraisal; repealing the Tax Division legislative rule relating to guidelines for assessors to assure fair and uniform nonutility personal property values; repealing the Tax Division legislative rule relating to review by circuit court on certiorari; repealing the Tax Division legislative rule relating to review of appraisals by the county commission sitting as an administrative appraisal review board; repealing the Tax Division legislative rule relating to additional review and implementation of property appraisals; repealing the Tax Division legislative rule relating to review by circuit court on certiorari; directing the State Tax Department to amend and promulgate legislative rule relating to valuation of timberland and managed timberland; repealing the Tax Division legislative rule relating to revision of levy estimates; repealing the Tax Division legislative rule relating to inheritance and transfer tax; repealing the Tax Division legislative rule relating to annual tax on incomes of certain carriers; repealing the Tax Division legislative rule relating to the telecommunications tax; repealing the Tax Division legislative rule relating to tax credit for employing former members of Colin Anderson Center; repealing the Tax Division legislative rule relating to tax credits for new value-added, wood manufacturing facilities; repealing the Tax Division legislative rule relating to tax credits for new steel, aluminum and polymer manufacturing operations; repealing the Tax Division legislative rule relating to the business investment and jobs expansion tax credit, corporation headquarters relocation tax credit and small business tax credit; repealing the Tax Division legislative rule relating to appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes; repealing the Banking Commissioner legislative rule relating to the West Virginia Consumer Credit and Protection Act; repealing the Banking Commissioner procedural rule relating to West Virginia Board of Banking and Financial Institutions; repealing the Office of the Insurance

53 Commissioner legislative rule relating to utilization management; repealing the Office of
54 the Insurance Commissioner legislative rule relating to Medicare supplement insurance
55 coverage; and directing the Lottery Commission to amend and promulgate legislative rule
56 relating to limited video lottery.

Be it enacted by the Legislature of West Virginia:

1 That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended
2 and reenacted to read as follows:

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE
LEGISLATIVE RULES.**

§64-7-1 . Alcohol Beverage Control Commission .

1 (a) The legislative rule filed in the State Register on July 31, 2015, authorized under the
2 authority of section twenty-two, article sixteen, chapter eleven of this code, modified by the
3 Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making
4 Review Committee and refiled in the State Register on November 4, 2015, relating to the Alcohol
5 Beverage Control Commission (nonintoxicating beer licensing and operations procedures, 176
6 [CSR 1](#)), is authorized.

7 (b) The legislative rule filed in the State Register on July 31, 2015, authorized under the
8 authority of section ten, article seven, chapter sixty of this code, relating to the Alcohol Beverage
9 Control Commission (private club licensing, 175 [CSR 2](#)), is authorized.

10 (c) The legislative rule filed in the State Register on July 31, 2015, authorized under the
11 authority of section sixteen, article two, chapter sixty of this code, modified by the Alcohol
12 Beverage Control Commission to meet the objections of the Legislative Rule-Making Review
13 Committee and refiled in the State Register on November 4, 2015, relating to the Alcohol
14 Beverage Control Commission (distilleries and mini-distilleries, 175 [CSR 10](#)), is authorized.

§64-7-2. Racing Commission.

1 (a) The legislative rule filed in the State Register on July 22, 2015, authorized under the
2 authority of section six, article twenty-three, chapter nineteen of this code, relating to the Racing
3 Commission (thoroughbred racing, 178 CSR 1), is authorized.

4 (b) The legislative rule filed in the State Register on July 22, 2015, authorized under the
5 authority of section six, article twenty-three, chapter nineteen of this code, relating to the Racing
6 Commission (pari-mutuel wagering, 178 CSR 5), is authorized.

§64-7-3. Department of Revenue.

1 (a) The legislative rule filed in the State Register on July 29, 2015, authorized under the
2 authority of section five-t, article ten, chapter eleven of this code, modified by the Department of
3 Revenue to meet the objections of the Legislative Rule-Making Review Committee and refiled in
4 the State Register on September 18, 2015, relating to the Department of Revenue (payment of
5 taxes by electronic funds transfer, 110 CSR 10F), is authorized.

6 (b) The legislative rule filed in the State Register on July 29, 2015, authorized under the
7 authority of section five, article ten, chapter eleven of this code, relating to the Department
8 Revenue (exchange of information agreement between the Commissioner of the Tax Division of
9 the Department of Revenue and the Secretary of the Department of Commerce, the Secretary of
10 the Department of Environmental Protection, the Director of the Division of Forestry of the
11 Department of Commerce and the Commissioners of the Public Service Commission, 110 CSR
12 50H), is authorized, with the amendment set forth below:

13 On page one, subsection 3.1, line six, following the word “Commerce”, by inserting the
14 words “Secretary of State”.

15 (c) The legislative rule effective on June 12, 1987, authorized under the authority of section
16 one, article one-a, chapter eleven of this code, relating to the Tax Division (listing of interests in
17 natural resources for purposes of first statewide appraisal, 110 CSR 1B), is repealed.

18 (d) The legislative rule effective on May 13, 1987, authorized under the authority of section
19 twenty-nine-a, article one-a, chapter eleven of this code, relating to the Tax Division (guidelines

for assessors to assure fair and uniform nonutility personal property values, 110 CSR 1C), is repealed.

(e) The legislative rule effective on June 12, 1987, authorized under the authority of section one, article one-a, chapter eleven of this code, relating to the Tax Division (review by circuit court on certiorari, 110 CSR 1D), is repealed.

(f) The legislative rule effective on June 12, 1987, authorized under the authority of section one, article one-a, chapter eleven of this code, relating to the Tax Division (review of appraisals by the county commission sitting as an administrative appraisal review board, 110 CSR 1E), is repealed.

(g) The legislative rule effective on May 13, 1987, authorized under the authority of section one, article one-a, chapter eleven of this code, relating to the Tax Division (additional review and implementation of property appraisals, 110 CSR 1F), is repealed.

(h) The legislative rule effective on May 13, 1987, authorized under the authority of section one, article one-a, chapter eleven of this code, relating to the Tax Division (review by circuit court on certiorari, 110 CSR 1G), is repealed.

(i) The Legislature directs the Department of Revenue to promulgate the legislative rule filed in the State Register on May 5, 1999, authorized under the authority of section five-a, article one-c, chapter eleven, of this code, relating to the Department Revenue (Valuation of Timberland and Managed Timberland, 110 CSR 1H), with the amendments set forth below:

§110-1H-1. General.

1.1 Scope. — This legislative rule establishes the procedure for the classification and valuation of timberland and managed timberland.

1.2. Authority. — W. Va. Code §§11-1C-5(a)(2)(B), 11-1C-11(c)(1) and 11-1C-11b(c).

1.3. Filing Date. —

1.4. Effective Date. — July 1, 2016.

1.5. Repeal of former rule. — This legislative rule repeals and replaces WV 110 C.S.R.1H “Valuation of Timberland and Managed Timberland” filed April 16, 1999 and effective May 1, 1999.

§ 110-1H-2. Introduction.

2.1. The appraised value of managed timberland shall be determined by the State Tax Commissioner on the basis of the potential of the land to produce future income according to its use and productive potential. Potential future net income is discounted to its present value utilizing a discounted cash flow; this is the appraised value. The ability of a stand of timber to produce wood products for sale or use depends primarily on the quality of the soil and certain topographic and climatic features which can be expressed as a site index. Site index is the principal criterion influencing the appraised value of managed timberland. These factors shall be reviewed annually by the Tax Commissioner for necessary updating of the method described in order to properly reflect future changes in the values of managed timberland.

2.2. The appraised value of timberland (woodland/wasteland) shall be determined on the basis of market comparable derived through analysis of sales prices of comparable timberland (forested) properties. Timberland appraisal value shall always be more than the appraised value of equivalent grades of properties being classified as managed timberland in the county. The appraised value of timberland shall be determined by the county assessor based upon the Timberland Classification Schedule found in Appendix 1 of this rule.

2.3. The county assessor shall collect and analyze market data, including sales of timberland, segregated into the classes contained in the previously referenced classification schedule. Based upon this market analysis, the county assessor shall select the value for each class of timberland that best reflects the market value of the property if exposed to the market for sale as timberland. The values by class thus selected shall be entered, by the assessor, into the respective county land pricing tables and shall be used by the assessor to estimate the appraised value of timberland for property tax purposes.

§ 110-1H-3. Definitions.

71 As used in this rule and unless the context clearly requires a different meaning, the
72 following terms shall have the meaning ascribed in this section.

73 3.1. "Capitalization rate" means the rate used to convert an estimate of income into an
74 estimate of present value. Details of the procedure for determining the capitalization rate are
75 found in Section 12 of this rule.

76 3.2. "Certified managed timberland plan" means the managed timberland plan that is
77 certified by the landowner when the landowner certifies that the property is maintained as
78 managed timberland.

79 3.3. "Cost" means a component of management costs and property taxes.

80 3.4. "dbh" means the diameter of trees at breast height, which is 4.5' above ground level.

81 3.5. "Division of Forestry" means the West Virginia Bureau of Commerce, Division of
82 Forestry.

83 3.6. "Farm wood lot" means that portion of a farm in timber but may not include land used
84 primarily for the growing of timber for commercial purposes except that Christmas trees, or
85 nursery stock and woodland products, such as nuts or fruits harvested for human consumption,
86 shall be considered farm products and not timber products.

87 3.7. "Harvest income per acre" means the expected after tax revenue and accrued interest for
88 each harvesting interval. Interest is assumed to accrue at the rate of return from the period of
89 harvest to the end of the 80 year rotation cycle.

90 3.8 "Integrated Moisture Index" means soil moisture data derived from a methodology
91 described in "A GIS-Derived Integrated Moisture Index"; by Louis R. Iverson and Anantha M.
92 Prasad; USDA Forest Service, Northeastern Research Station, Delaware, Ohio; 2003, as the
93 same is refined and applied, from time to time, by subsequent professional studies conducted, or
94 contracted for, by the Division of Forestry to determine current measures of the same.

95 3.9 "MBF" means thousand board feet.

3.10. "Management cost" means the cost determined tri-annually by the Tax Commissioner to be the average annual cost of maintaining and protecting a producing forest. Maintenance costs may include costs of inventory, boundary survey, security, maps, and any other items as can be shown to have been necessary. Protection may include costs of protection against forest fires; harmful insect and tree diseases; costs of repair and replacement resulting from damages reported to appropriate police agencies, including all-terrain vehicles (ATV's) and other vehicular damages, and costs of replacing and replanting forest production and/or plantations destroyed or injured by deer or other wild animals whose populations exceed the maximum carrying capacity of the site. Management costs shall be determined as an average for the entire State or by regions, by Managed Timberlands Productivity Grades or by parcel acreage and shall be deducted from gross annual income per acre to obtain net annual income per acre.

3.11. "Managed Timberland" means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site, and that it is managed pursuant to a plan as defined in subsection 3.12 and appendix 2 of this rule.

3.12. "Managed Timberland Plan" means the planned timberland management program that conforms to the following standards established by the Division of Forestry in the plan:

3.12.1. Includes the owner's multipurpose objectives for the property;

3.12.2. Provides for the land:

3.12.2.a. to remain in at least 40% or greater forest cover of well distributed commercially important trees,

3.12.2.b. to produce continuous crops of timber according to the site's productivity,
and,

3.12.2.c. to be monitored for and action taken against threats from injurious agencies;

3.12.3. Ensures that harvesting will be done in a manner that assures regeneration of the landowner's preferred species; and

3.12.4. Assures sustainability of forest resources and compliance with the Logging Sediment control Act, W. Va. Code §19-1B-1 et seq.

3.13. "Managed Timberland Productivity Grades" means timberland classified as Grade 1 (excellent to very good), Grade 2 (good to fair), or Grade 3 (poor), according to the table in Appendix 4 of this rule.

3.14. "Owner of surface less timber" means any person who owns an interest in the surface where the timber rights have been sold to someone else.

3.15. "Owner of Timber" means any person who owns an interest in timber, including a lessor or sublessor and an owner of a contract right to cut timber. The owner of timber must have a right to cut timber for sale on his, her or its own account for use in his, hers, or its trade or business in order to have property rights that are subject to ad valorem property taxes.

3.16. "Site Index" means a method of measuring the potential of a site to grow trees to the height that the average dominant and co-dominant trees on the site will attain at a given age. The site index will be determined using the applicable Integrated Moisture Index (IMI) as shown on Appendix 4 of this rule.

3.17. "Stumpage Price" means the market value of standing trees (on the stump) prior to felling and removal, and is expressed in dollars per unit of volume (MBF or cords). For appraisal purposes, real stumpage price will be adjusted to real price changes over various harvest periods (i.e., 35, 45, 55 or 80 years) during the 80 year rotation cycle. The real price change shall be determined using historical West Virginia saw timber and pulpwood prices based upon 16 inch (dbh) logs provided by the West Virginia Division of Forestry (i.e. data from the last 20 years or more depending on data availability). . Stumpage price projections over various harvest periods shall be calculated using the real price change derived from historical saw timber and pulpwood prices in West Virginia. Thus, since stumpage prices provided by the Division of Forestry are in

nominal terms, those prices shall be converted to real dollars (i.e. real terms) before stumpage projections are calculated. A five-year weighted moving average shall be computed in order to minimize the effects of short-term fluctuations. Stumpage prices shall be computed for each stumpage price region in order to reflect regional differences in markets, topography, and accessibility.

3.18. “Stumpage Price Region” means a geographical region of the State, usually consisting of several counties, in which conditions of the timber, timber markets, topography, and accessibility are sufficiently similar to result in similar stumpage prices at any given time. The counties involved in each stumpage price region have been identified by the Division of Forestry and are found in Appendix 3 of this rule.

3.19. “Timber” means trees of any marketable species, whether planted or of natural growth, standing or down, located on public or privately owned land, which are suitable for commercial or industrial use.

3.20. “Timberland (Woodland/Wasteland)” means any surface real property, except Managed Timberland and farm woodlots of not less than ten contiguous acres, which is primarily in forest and which has, in consideration of their size, sufficient numbers of commercially-valuable species of trees to constitute at least forty percent (40%) normal stocking of forest trees, as shown Appendix 2 of this rule, which are well distributed over the growing site. Additionally, land that has been recently harvested of merchantable timber and is growing into or being planted as a new forest may be classified as timberland.

§ 110-1H-4. Classification of Timberland and Managed Timberland.

4.1. Managed Timberland. — For property to qualify for managed timberland valuation, the owner of the surface real property identified on the county tax mapping system shall annually certify in writing to the Division of Forestry that the property satisfies the requirements of managed timberland, as defined in Section 3 of this rule, and enter into a contract with the Division of Forestry to use the real estate in a planned program of multiple purpose forest management,

including erosion control during timbering operations, as specified in the West Virginia Forest Practices Standards and the West Virginia Silvicultural Nonpoint Source Management Program, and as explained in Section 13 of this rule. Multipurpose forest management contemplates the periodic selection of timber on the property for harvesting as an integral part of silvicultural management practices. The silvicultural manipulation subjects the property to periodic commercial use that may have an effect on the property's classification for property tax purposes. Therefore, in recognition of the silvicultural manipulation, the following guidelines shall be observed by the Division of Forestry when classifying managed timberland for property tax purposes.

4.1.1. Property containing managed timberland, which may have been properly taxed as Class II property prior to the managed timberland application, shall remain as Class II property unless there is some other event or change in the use of the property that disqualifies it from being taxed as Class II property.

4.1.2. Property containing managed timberland, which may have been properly taxed as Class III or Class IV property prior to the managed timberland application, shall be taxed as Class III or Class IV property depending upon location.

4.2. Timberland. — Timberland shall be taxed as Class II, Class III, or Class IV property in accordance with provisions of West Virginia Code § 11-8-5. In order for timberland to be taxed as Class II property, the timberland shall be used and occupied by the owner exclusively for residential purposes. (This section does not apply to farm woodlots - See, Valuation of Farmland and Structures Situated Thereon For Ad Valorem Property Tax Purposes, 110 C.S.R. 1H, § 110-1H-5.)

4.3. Surface less timber — Property where the owner of the surface does not include the timber rights is not eligible for managed timberland classification and shall be valued by the assessor.

4.4. Timber — Property where the owner of the timber rights does not include the surface, is not eligible for managed timberland classification and shall be valued by the assessor.

§ 110-1H-5. Valuation of Farm Wood Lots.

Farm wood lots shall be included in the valuation of farm property under W. Va. Code § 11-1A-10, except when the farm wood lot is a separate parcel or tract entered in the land books, and/or except when the primary use of the farm wood lot is in commercial forestry or in a managed timberland contract.

§ 110-1H-6. Timberland Improvements.

Improvements such as roads and service buildings that are a required (usual) part of timber management operations are not subject to an additional market value appraisal over and above the appraisal of the managed timberland. Improvements that are not a necessary part of the timber management operations, such as dwellings, cottages, hunting camps, other recreational facilities, and associated real estate are subject to additional market value appraisals. Additionally, haul roads, strip and/or mountaintop removal mines, plant facilities, powerline and gas/oil pipeline rights-of-way, and gas/oil well pads shall not be valued as managed timberland.

§ 110-1H-7. Appraised Value of Timberland.

The appraised value per acre of timberland shall be determined based upon market comparables and shall be estimated by the county assessor. There are at least five (5) various timberland rates based on the timberland classification schedule described in Appendix 1 of this rule. Assessors shall tri-annually review and grade these non-managed timberland properties in order to assign the proper rate per acre to the property. The rate per acre shall be established by the assessor in conformity with requirements of subsection 2.2 of this rule.

§ 110-1H-8. Valuation of Less Than 10 Acres.

A parcel, or contiguous parcels, of timberland totaling less than ten (10) acres shall not be considered for classification as managed timberland and shall be valued by the county assessor based upon market comparables.

§ 110-1H-9. Harvest Volumes Per Acre

Harvest Volumes per acre shall be based on site index and the ability of the site to yield timber measured in thousands of board feet (MBF) per acre (Scribner rule) or cords per acre with harvest intervals at thirty-five (35), fifty-five (55) and eighty (80) years for Grade 1 and Grade 2 soils, and at forty-five (45) and eighty (80) years for Grade 3 soil.

§ 110-1H-10. Appraised Value Per Acre of Managed Timberland.

The appraised value per acre of managed timberland is the present worth of an infinite periodic net income from the land less a property tax adjustment for Class II, and a blend of Class III and Class IV tax rates for Class III and Class IV properties using, for all measures required by this rule to compute such appraised value per acre of managed timberland, real values and not nominal values. Except as required by the provisions of subsection 2.2 of this rule, in no case shall the appraised value per acre for any grade of managed timberland in any county be less than eighty percent of the value per acre of the comparable grade of managed timberland in the immediately preceding tax year in that same county. The appraised value is the net present worth of all revenues and costs associated with growing timber on the land in perpetuity. Net income is the difference between projected revenues (e.g. harvest revenues in years 35, 55 and 80) and projected costs (e.g. management costs).

§ 110-1H-11. Procedure for Determining Value Per Acre of Managed Timberland.

The following is a step-by-step procedure for determining the appraised value per acre of managed timberland.

11.1. The Tax Commissioner shall enter the surface ownership maps (typically 1 inch = 400 feet or 1 inch = 800 feet) into a Geographic Information System (GIS). The GIS shall be used to register the surface ownership parcels to the same geographic coordinate system and scale as that of the Integrated Moisture Index. This process allows the calculation of the area of each soil productivity grade in each parcel.

11.2. Average stumpage price (5 year weighted moving average) is determined by the State Tax Commissioner, based on stumpage price reports from the Division of Forestry and other available sources.

11.3. Total harvest income per acre over a rotation cycle of thirty-five (35) years, fifty-five (55) years and eighty (80) years for Grade 1 and 2 soils, and forty-five (45) years and eighty (80) years for Grade 3 soils shall be compounded at the end of the rotation (i.e. harvest income value at year 80) less applicable state and federal tax payments, if any.

11.4. End of rotation (80 year) total management costs per acre shall be determined by compounding the annual management costs at the end of the rotation (i.e. management cost value in year 80) using the after tax management costs and accrued interest on those costs.

11.5. Appraised value per acre for managed timberland shall be determined by first deducting the cumulative end of rotation total management costs from the cumulative end of rotation total harvest income per acre as defined in paragraph 3.7 of this rule; second, calculating the present worth of that difference, assuming an infinite periodic income from the managed timberland; and third, adjusting that value by the annual ad valorem property tax rate (either Class II or a blended Class III/IV).

11.6. The GIS shall be used to calculate the appraised value of managed timberland property on an annual basis. The appraised value of each managed timberland property shall be calculated using the formula found in Appendix 6 of this rule.

11.6.1. Those acreages involved in a managed timberland application where the use of the property is not for managed timberland purposes (e.g., homesite, pasture, tillable, recreation, stripmine, etc.) shall not be classified as managed timberland and shall be appraised by the county assessor.

§ 110-1H-12. Capitalization Rate.

The average statewide capitalization rate (based on a 5-year weighted moving average of various components) for managed timberland shall be determined annually by the Tax

Commissioner through the use of generally accepted methods of determining those rates. The rate shall be based on the assumption of a discounted cash flow model based upon harvest intervals reflected in Appendix 4 of this rule. The capitalization rate used to value managed timberland shall be developed considering the following:

12.1. Discount Component. — The summation technique shall be used in developing a discount component of the capitalization rate. The five subcomponents of the discount component are:

12.1.1. Safe Rate. — The safe rate shall reflect a rate of return that an investor could expect on an investment of minimal risk. This rate shall be developed through weighted averages of interest rates offered on five-year United States Treasury Bills for the five years immediately preceding the appraisal date.

12.1.2. Non-liquidity Premium. — The non-liquidity premium rate shall be developed through an annual review to determine a reasonable estimate of time that timberland, when exposed for sale, remains on the market before being sold. The time thus determined shall be used to identify United States Treasury Bills with similar time differentials in excess of thirteen-week Treasury Bills. The interest differential between these securities shall be used to represent the nonliquidity rate. For example, if it is determined that a tract of timberland remains on the market for an average of nine months (39 weeks) before being sold, the nonliquidity rate shall be derived by subtracting the rate on 13-week Treasury Bills from the rate on one year Treasury Bills. This review shall consider the weighted average of these differences for a five year period immediately preceding the appraisal date.

12.1.3 Default Risk Premium – The Default Risk Premium, being the premium added to the safe rate to compensate for the chance that the obligor will default on a loan, is the difference between the rate on a U.S. Treasury Bond and the average rate on investment grade corporate bonds, (i.e. rate on AAA, AA, A and BBB rated bonds) of equal maturity and marketability. The

Default Risk Premium will take into account the weighted average of these differences for a five-year period immediately preceding the appraisal date.

12.1.4. Management Rate. — The management rate represents the cost of managing the investment, not the cost of managing the timberland. Historically, the management rate has been one-half of one percent (0.5%); therefore, this rate shall be considered the industry standard for current applications.

12.1.5. Discount Component. — In determining the discount component of the capitalization rate, the Tax Commissioner shall take the sum of the safe rate, the nonliquidity rate, the default risk rate, and the management rate. The resulting discount rate is a nominal discount rate.

12.2. Property Tax Component. — The property tax component shall be derived by multiplying the assessment rate by the statewide five year weighted average of tax rates on Class II and on a blended rate for Class III and Class IV properties. The discounted property tax rates shall be deducted from the discounted difference between total cumulative harvest income and end of rotation management costs.

§ 110-1H-13. Application for Certification and Valuation as Managed Timberland.

In order to qualify, under the provisions of this rule, for managed timberland valuation purposes, the owner of the timberland shall, on or before the first day of September, enter into a contract with the Division of Forestry. The contract shall state that the real estate is being used in a planned program of timber management and erosion control practices intended to enhance the growth of commercially desirable species through generally accepted silvicultural practices and the use of Best Management Practices as specified in the West Virginia Forest Practice Standards and the West Virginia Nonpoint Source Management Program. The contract shall be assignable with the sale of the land when the land is sold to be used for managed timberland purposes. Annually, on or before September 1, the owner shall file an application for certification as managed timberland with the Division of Forestry. The application shall include either (a) a

commitment to maintain and protect timberland certified as managed timberland by demonstrating land-use objectives to include resource management and soil and water protection; or (b) a written plan prepared by a professional forester. Falsification of certification or failure to follow a professionally prepared plan shall result in loss of valuation as managed timberland. In any event, the following information shall be provided:

13.1. The county, district, map, parcel number, deed book surface acreage and actual surveyed surface acreage, if available, for each parcel that is to be valued as managed timberland;

13.1.1. The amount of acreage in each parcel that should be classified as managed timberland. For those properties where managed timberland acreage is different than deed acreage, information identifying the use of the non-managed acreage is required;

13.1.2. The signature of owner (including all fractional interests) acknowledging that the contract with the Division of Forestry has been annually reviewed and approved and that the property is being managed in accordance with the Best Management Practices for forestry as outlined in the West Virginia Forest Practice Standards and the Best Management Practices for water quality as outlined in the West Virginia Nonpoint Source Management Program. If a written plan is provided in accordance with Section 13 of this rule, that plan shall be approved and signed by a registered timber management forester.

13.2. The Division of Forestry shall, on or before October 1 of each year, provide the State Tax Commissioner with a copy of the certifications and reports and provide a list of those properties certified as managed timberland and those denied certification. After the October 1 report is filed, the Division of Forestry has until January 15 of the next calendar year to review any applications questioned by the State Tax Commissioner or county officials.

13.3. The property owner whose managed timberland application was denied or who has been refused certification pending demonstration of specific facts may, on or before November 1 of the assessment year, file an appeal of the denial or file the requested data with the Director of the

Division of Forestry. On or before the following December 1, the Division of Forestry shall advise the Tax Commissioner of any changes of application denials.

§ 110-1H-14. Summary of Method of Determining Appraised Value.

The formula to be used in determining the appraised value of property categorized as managed timberland is found in Appendix 5 of this rule.

APPENDIX 1

Timberland Classification Schedule

Class “A”

This land is adaptable for use as forest property. It may be adaptable to other profitable uses. There is a stand of trees of commercial species, the size being from fourteen (14) to twenty (20) inches d.b.h. and above.

Class “B”

This land is also adaptable for use as forest property. It may be adaptable for other profitable uses. There is a stand of trees of commercial species, the size being from ten (10) to fourteen (14) inches d.b.h.

Class “C”

This land is adaptable for use as forest property. There is a stand of trees of commercial species, the size being from six (6) to ten (10) inches d.b.h.

Class “D”

This land is adaptable for use as forest property. There is a stand of trees of commercial species, the size being from four (4) to six (6) inches d.b.h.

Class “E”

This land is adaptable for use as forest property. There are trees of commercial species less than four (4) inches d.b.h. This class of timberland also includes clear cut property and property subjected to total harvest where the remaining commercial species are less than four (4) inches d.b.h.

378 **APPENDIX 2**

379 Minimum Number of Trees Required Per Acre to Determine

380 30 Square Feet of Tree Basal Area of 40%

381 Stocking for Classification as Forest Land

D.B.H. Range	D.B.H. in 2" Classes	Basal Per Tree	Area Per Acre	Per 1/5 Acre	Per 1/10 Acre
Up to 2.9"	Seedlings		400	80	40
3.0-4.9"	4	0.0873	400	80	40
5.0-6.9"	6	0.1964	153	31	15
7.0-8.9"	8	0.3491	86	17	9
9.0-10.9"	10	0.5454	55	11	6
11.0-12.9"	12	0.7854	38	8	4
13.0-14.9"	14	1.0690	28	6	3
15.0"+	16+	1.3983+	21	4	2

382 NOTE:

383 (a) Area 1/5 acre, circle, diameter 105'4"; square 93.4" per side

384 (b) Area 1/10 acre; circle, diameter 74'6"; square 66'

385 (c) Number of seedlings present may qualify on a percentage basis; Example, 100 seedlings
 386 would be equivalent of 7.5 square feet of basal area (25% x 30 - 7.5)

387 (d) Seedlings per acre are based on total pine and hardwood stems. Where intensive pine
 388 management is practiced a minimum of 250 well distributed pine seedlings will qualify.

389 **APPENDIX 3**

390 Stumpage Price Regions

Region 1	Region 2	Region 3	Region 4	Region 5
Brooke	Braxton	Barbour	Berkeley	Boone
Cabell	Calhoun	Greenbrier	Grant	Fayette
Hancock	Clay	Monroe	Hampshire	Kanawha
Jackson	Doddridge	Nicholas	Hardy	Lincoln
Marshall	Gilmer	Pendleton	Jefferson	Logan
Mason	Harrison	Pocahontas	Mineral	McDowell
Ohio	Lewis	Preston	Morgan	Mercer
Pleasants	Marion	Randolph		Mingo
Putnam	Monongalia	Tucker		Raleigh
Tyler	Ritchie	Upshur		Summers
Wetzel	Roane	Webster		Wayne
Wood	Taylor			Wyoming

Wirt

APPENDIX 4

TABLE OF HARVEST VOLUMES PER ACRE WITH HARVEST INTERVALS OVER AN 80 YEARS ROTATION CYCLE

	35 Years	55 Years	80 Years	Total
Grade 1				
IMI ≥ 45	4.6 Cords	2.6 Cords	3.3 Cords	10.5 Cords
(Very Good to Excellent)	1.5 MBFs	4.4 MBFs	8.6 MBFs	14.5 MBFs
Grade 2				
IMI ≥ 30 AND ≤ 44.99	3.3 Cords	7.0 Cords	4.6 Cords	14.9 Cords
(Fair to Good)	1.0 MBFs	4.4 MBFs	8.6 MBFs	14.5 MBFs
Grade 3				
IMI ≤ 29.99	3.1 Cords	15.4 Cords	18.5 Cords	
(Poor)	8 MBFs	3.7 MBFs	4.5 MBFs	

Scribner rule. Schnur, G. Luther. UNITED STATES DEPARTMENT OF AGRICULTURE Tech. Bul. No. 560. 1937. The Tax Commissioner may adopt a different timber scale and revise yields as standards of timber utilization change or as new information becomes available on timber yields of forest stands.

APPENDIX 5**For Class II Parcels:**

Appraised Value Per Acre = ((Future Value of Harvest Revenues – Future Value of Management Costs)/((1 + Real Discount Rate)ⁿ) - 1)) less discounted property tax Class II rate.

Where:

n = 80 years

Future Value of Harvest Revenues – value of harvest revenues in year 80 using compounding formula below

$$V_n = V_o(1 + i)^n - 1$$

Where: V_o = harvest revenue in year 0 (i.e. 35, 45, 55 or 80)

i = capitalization rate

n = rotation length

V_n = future value of harvest revenues

Future Value of Management Costs – value of management costs in year 80 using the formula for calculating the future value of a terminating annual series as given below:

$$V_n = a\{(1 + i)^n - 1/i\}$$

Where: a = annual management costs

i = capitalization rate

n = rotation length

V_n = future value of management costs

For Class III & IV Parcels:

Same formula except the discounted property tax rate for Class III and Class IV properties is used. Until the present natural resource and county computer systems can be programmed to change appraisals based on tax classifications or until a new computerized appraisal system can be put into effect, the property tax discount shall be a blended rate including both Class III and Class IV rates.

APPENDIX 6

$$AV = (P_1V_1) + (P_2V_2) + (P_3V_3)$$

Where:

AV = Property Appraised Value

P₁ = Total Acreage of Parcel in Soil Productivity Grade 1

P₂ = Total Acreage of Parcel in Soil Productivity Grade 2

P₃ = Total Acreage of Parcel in Soil Productivity Grade 3

V₁ = Value of Soil Productivity Grade 1

V₂ = Value of Soil Productivity Grade 2

V₃ = Value of Soil Productivity Grade 3

(j) The legislative rule effective on June 29, 1964, authorized under the authority of article one, chapter eleven of this code, relating to the Tax Division (revision of levy estimates, 110 CSR 8), is repealed.

(k) The legislative rule effective on September 16, 1966, authorized under the authority of article ten, chapter eleven of this code, relating to the Tax Division (inheritance and transfer tax, 110 CSR 11), is repealed.

(l) The legislative rule effective on January 1, 1974, authorized under the authority of section five-a, article ten, chapter eleven of this code, relating to the Tax Division (annual tax on incomes of certain carriers, 110 CSR 12A), is repealed.

(m) The legislative rule effective on April 4, 1988, authorized under the authority of section five, article ten, chapter eleven of this code, relating to the Tax Division (telecommunications tax, 110 CSR 13B), is repealed.

(n) The legislative rule effective on May 1, 1996, authorized under the authority of section three, article thirteen-i, chapter eleven of this code, relating to the Tax Division (tax credit for employing former members of Colin Anderson Center, 110 CSR 13I), is repealed.

(o) The legislative rule effective on May 1, 1999, authorized under the authority of section seven, article thirteen-m, chapter eleven of this code, relating to the Tax Division (tax credits for new value-added, wood manufacturing facilities, 110 CSR 13M), is repealed.

(p) The legislative rule effective on May 1, 1999, authorized under the authority of section seven, article thirteen-n, chapter eleven of this code, relating to the Tax Division (tax credits for new steel, aluminum and polymer manufacturing operations, 110 CSR 13N), is repealed.

(q) The legislative rule effective on May 1, 1995, authorized under the authority of section five, article ten, chapter eleven of this code, relating to the Tax Division (business investment and jobs expansion tax credit, corporation headquarters relocation tax credit and small business tax credit, 110 CSR 13C), is repealed.

(r) The legislative rule effective on April 4, 1988, authorized under the authority of section one, article one-a, chapter eleven of this code, relating to the Tax Division (appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes, 110 CSR 1), is repealed.

§64-7-4. Banking Commissioner.

1 (a) The legislative rule effective on April 23, 1982, authorized under the authority of
2 section four, article three, chapter thirty-one-a of this code, relating to the Banking Commissioner
3 (West Virginia Consumer Credit and Protection Act, 106 CSR 8), is repealed.

4 (b) The procedural rule effective on January 10, 1975, authorized under the authority of
5 section two, article three, chapter thirty-one-a of this code, relating to the Banking Commissioner
6 (West Virginia Board of Banking and Financial Institutions, 107 CSR 5), is repealed.

§64-7-5. Office of the Insurance Commissioner.

1 (a) The legislative rule effective on May 16, 1997, authorized under the authority of section
2 four, article twenty-five-a, chapter thirty-three of this code, relating to the Office of the Insurance
3 Commissioner (utilization management, 114 CSR 51), is repealed.

4 (b) The legislative rule effective on December 28, 1981, authorized under the authority of
5 section ten, article two, chapter thirty-three of this code, relating to the Office of the Insurance
6 Commissioner (Medicare supplement insurance coverage, 114 CSR 17), is repealed.

§64-7-6. Lottery Commission.

1 The Legislature directs the Lottery Commission to promulgate the legislative rule filed in
2 the State Register on May 20, 2009, authorized under the authority of section four hundred two,
3 article twenty-two-b, chapter twenty-nine of this code, relating to the Lottery Commission (limited
4 video lottery, 179 CSR 5), with the amendment set forth below:

5 On page 3, after subsection 2.11, by adding a new subsection 12.2 to read as follows:

6 2.12. "Licensed limited video lottery location approved by the commission" as it appears
7 in W. Va. Code, §29-22B-1201(a) means the location in excess of the following straight-line
8 distances from any of the following places:

9 2.12.a. The location is at least one hundred fifty feet from, or has an external structural
10 connection not amounting to a common internal wall to, a premises that already has a retail
11 license for video lottery terminals or the perimeter of a public park;

12 2.12.b. The location is at least three hundred feet from a church, school or daycare center;

13 or

14 12.12.c. The location is at least one hundred fifty feet from a business that sells petroleum
15 products capable of being used as fuel in an internal combustion engine.

16 And,

17 By renumbering the remaining subsections.